



General Assembly

January Session, 2005

Substitute Bill No. 1301

* SB01301INS__032405__ *

AN ACT CONCERNING THE VOLUNTARY RESTRUCTURING OF INSURERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2005*) As used in sections 1 to
2 20, inclusive, of this act:

3 (1) "Applicant" means an insurer that is or becomes domiciled in
4 this state with the intention of filing a petition under section 4 of this
5 act together with any person that is part of an insurance holding
6 company system with the insurer;

7 (2) "Assessment deficit" or "assessment surplus" means the
8 difference between the estimated assessment paid by the applicant for
9 any year and:

10 (A) The applicant's actual proportionate share of regulatory
11 expenditure for the previous year if the applicant was domiciled in this
12 state on March fifteenth of the previous year; or

13 (B) The actual redomestication expenditure for the previous year
14 attributable to the applicant if the applicant was not domiciled in this
15 state on March fifteenth of the previous year;

16 (3) "Commissioner" means the Insurance Commissioner;

17 (4) "Claim" means the right to payment, whether or not such right is
18 reduced to judgment, liquidated, unliquidated, fixed, contingent,
19 matured, unmatured, disputed, undisputed, legal, equitable, secured,
20 or unsecured, including claims based on incurred but unreported
21 losses, or a right to an equitable remedy for breach of performance if
22 such breach gives rise to a right to payment, whether or not such right
23 to an equitable remedy is reduced to judgment, fixed, contingent,
24 matured, unmatured, disputed, undisputed, secured, or unsecured;

25 (5) "Interest" means an equity security of the applicant;

26 (6) "Department" means the Insurance Department;

27 (7) "Equity security holder" means the holder of an equity security
28 of the applicant;

29 (8) "Guaranty association" means a guaranty association, as defined
30 in section 38a-905 of the general statutes, or foreign guaranty
31 association, as defined in section 38a-905 of the general statutes, that is
32 potentially obligated with respect to the applicant's policies;

33 (9) "Insurer" means insurer, as defined in section 38a-1 of the
34 general statutes;

35 (10) "Party in interest" means any person that has a claim against the
36 applicant or any policyholder;

37 (11) "Person" means person, as defined in section 38a-1 of the
38 general statutes;

39 (12) "Policy" means a contract of insurance or a contract of
40 reinsurance;

41 (13) "Policyholder" means an insured or a reinsured of the applicant;

42 (14) "Proportionate share" means, for a particular applicant as of
43 December thirty-first of the previous year, the ratio of:

44 (A) The gross assets of that applicant; to

45 (B) The gross assets of all applicants, other than those that were not
46 domiciled in this state on March fifteenth of that calendar year;

47 (15) "Redomestication expenditure" means, for any calendar year:

48 (A) The amount that the department's expenditures attributable to
49 the regulation of applicants increases as a result of any applicant
50 redomiciling to this state on or after March fifteenth of that year; less

51 (B) Filing fees, examination costs, and any other fees in relation to
52 insurance regulation in this state paid to this state by applicants that
53 redomiciled to this state on or after March fifteenth of that year, but
54 excluding any premium taxes;

55 (16) "Regulatory expenditure" means, for any calendar year:

56 (A) The amount of the department's expenditures attributable to the
57 regulation of applicants domiciled in this state on March fifteenth of
58 that year; less

59 (B) Filing fees, examination costs, and any other fees in relation to
60 insurance regulation in this state paid to this state by applicants
61 domiciled in this state on March fifteenth of that year, but excluding
62 any premium taxes.

63 Sec. 2. (NEW) (*Effective October 1, 2005*) (a) A court that considers
64 petitions brought under sections 1 to 20, inclusive, of this act shall have
65 the same jurisdiction as a court under chapter 704c of the general
66 statutes. Venue for such petitions shall be in the judicial district of New
67 Britain.

68 (b) The court may issue any order, process or judgment that is
69 necessary or appropriate to carry out the provisions of sections 1 to 20,
70 inclusive, of this act. No provision of sections 1 to 20, inclusive, of this
71 act providing for the raising of an issue by a party in interest shall be
72 construed to preclude the court from, on its own motion, taking any
73 action or making any determination necessary or appropriate to
74 enforce or implement court orders or rules, or to prevent an abuse of

75 process.

76 Sec. 3. (NEW) (*Effective October 1, 2005*) (a) The applicant shall
77 provide any notice required under any provision of sections 1 to 20,
78 inclusive, of this act in accordance with the regulations adopted by the
79 commissioner pursuant to section 20 of this act or in accordance with
80 an order of the court.

81 (b) If notice is given in accordance with this section, any orders
82 under sections 1 to 20, inclusive, of this act shall be conclusive with
83 respect to all persons, regardless of whether they received notice.

84 Sec. 4. (NEW) (*Effective October 1, 2005*) An applicant may
85 commence a case under sections 1 to 20, inclusive, of this act by filing a
86 petition with the court. The applicant shall file a plan with the petition.
87 No petition or plan shall be filed without the consent of the Insurance
88 Commissioner.

89 Sec. 5. (NEW) (*Effective October 1, 2005*) (a) Except as provided in
90 subsection (b) of this section, a plan may place a claim or an interest in
91 a particular class only if such claim or interest is substantially similar
92 to the other claims or interests in such class.

93 (b) A class may not contain claims which would be in different
94 classes under chapter 704c of the general statutes. A class may consist
95 solely of (1) claims under reinsurance agreements, (2) claims of
96 commercial creditors, or (3) claims of policyholders under policies that
97 are not covered by guaranty associations.

98 (c) A plan may designate a separate class of claims consisting only
99 of every unsecured claim that is less than or reduced to an amount that
100 the court approves as reasonable and necessary for administrative
101 convenience.

102 Sec. 6. (NEW) (*Effective October 1, 2005*) (a) Notwithstanding any
103 provision of law, a plan shall:

104 (1) Designate, subject to section 5 of this act, classes of claims and

105 interests;

106 (2) Specify any class of claims or interests that is not impaired under
107 the plan;

108 (3) Specify the treatment of any class of claims or interests that is
109 impaired under the plan;

110 (4) Provide the same treatment for each claim or interest of a
111 particular class, unless the holder of a particular claim or interest
112 agrees to a less favorable treatment of such particular claim or interest;

113 (5) Provide adequate means for the plan's implementation such as:

114 (A) Retention by the applicant of all or any part of the property of
115 the applicant;

116 (B) Transfer of all or any part of the property, or assumption of any
117 liabilities, of the applicant to one or more entities, whether or not
118 organized before or after the confirmation of such plan;

119 (C) Merger or consolidation of the applicant with one or more
120 persons;

121 (D) Sale of all or any part of the property of the applicant either
122 subject to or free of any lien, or the distribution of all or any part of the
123 property of the applicant among those having an interest in such
124 property of the applicant;

125 (E) Satisfaction of any lien;

126 (F) Cancellation or modification of any indenture or similar
127 instrument;

128 (G) Curing or waiving of any default;

129 (H) Extension of a maturity date or a change in an interest rate or
130 other term of outstanding securities or policies;

131 (I) Amendment of the applicant's charter; or

132 (J) Issuance of securities of the applicant, or of any entity acting
133 pursuant to subparagraph (B) or (C) of subdivision (5) of this
134 subsection, for cash, for property, for existing securities, or in exchange
135 for claims or interests, or for any other appropriate purpose;

136 (6) Provide for the inclusion in the charter of the applicant, or of any
137 corporation acting pursuant to subparagraph (B) or (C) of subdivision
138 (5) of this subsection, of a provision prohibiting the issuance of
139 nonvoting equity securities, and providing, as to the several classes of
140 securities possessing voting power, an appropriate distribution of such
141 power among such classes, including, in the case of any class of equity
142 securities having a preference over another class of equity securities
143 with respect to dividends, adequate provisions for the election of
144 directors representing such preferred class in the event of default in
145 the payment of such dividends; and

146 (7) Contain only provisions that are consistent with the interests of
147 creditors and equity security holders and with public policy with
148 respect to the manner of selection of any officer, director or trustee
149 under the plan and any successor to such officer, director or trustee.

150 (b) A plan may:

151 (1) Notwithstanding any other provision of this subsection, impair
152 or leave unimpaired any class of interests or secured or unsecured
153 claims;

154 (2) Subject to section 17 of this act, provide for the assumption,
155 rejection or assignment of any executory contract or unexpired lease of
156 the applicant not previously rejected under section 17 of this act;

157 (3) Provide for:

158 (A) The settlement or adjustment of any claim or interest belonging
159 to the applicant; or

160 (B) The retention and enforcement by the applicant or by a
161 representative of the applicant appointed for such purpose of any such
162 claim or interest;

163 (4) Provide for the sale of all or substantially all of the property of
164 the applicant, and the distribution of the proceeds of such sale among
165 holders of claims or interests;

166 (5) Provide for the transfer of claims to another insurer provided the
167 transferee is unconditionally obligated to pay all or a percentage of
168 each claim in accordance with the policies issued by the applicant.
169 Claims may be adjusted and compromised by the transferee.
170 Satisfaction of a claim by payment of a percentage of the amount of
171 such claim pursuant to a plan shall have the same effect as if the claim
172 had been paid in full. The transferee may adjust claims in the ordinary
173 course of its business and shall have the right to dispute such claims in
174 good faith, including the initiation or defense of legal actions with
175 respect to such claims;

176 (6) Provide for the transfer of rights to payment under ceding
177 reinsurance agreements to any person. Such transferee shall have the
178 right to collect and enforce collection of such reinsurance for the
179 amount payable to the ceding insurer without diminution because of
180 insolvency or because the applicant has failed to pay all or a portion of
181 the claim based on the amounts paid or allowed pursuant to section 18
182 of this act. The transfer of such rights shall not give rise to any defense
183 regarding the reinsurer's obligations under the reinsurance agreement
184 regardless of whether such agreement or other applicable law
185 prohibits the transfer of rights under the reinsurance agreement.
186 Except as provided in this subsection, any transfer of rights pursuant
187 to this subdivision shall not impair any rights or defenses of the
188 reinsurer which existed prior to the transfer or would have existed in
189 the absence of the transfer. Except as otherwise provided in this
190 subsection, any transfer of rights pursuant to this subdivision shall not
191 relieve the transferee or the applicant from obligations owed to the
192 reinsurer pursuant to the reinsurance or other agreement;

193 (7) Include any other appropriate provision not inconsistent with
194 the applicable provisions of sections 1 to 20, inclusive, of this act.

195 Sec. 7. (NEW) (*Effective October 1, 2005*) A class of claims or interests
196 is impaired under a plan unless, with respect to each claim or interest
197 of such class, the plan:

198 (1) Leaves unaltered the legal, equitable and contractual rights to
199 which such claim or interest entitles the holder of such claim or
200 interest; or

201 (2) Notwithstanding any contractual provision or applicable law
202 that entitles the holder of such claim or interest to demand or receive
203 accelerated payment of such claim or interest after the occurrence of a
204 default, the plan:

205 (A) Cures any such default that occurred before or after the
206 commencement of the case under sections 1 to 20, inclusive, of this act,
207 other than a default of a kind specified in subsection (c) of section 17 of
208 this act;

209 (B) Reinstates the maturity of such claim or interest as such maturity
210 existed before such default;

211 (C) Compensates the holder of such claim or interest for any
212 damages incurred as a result of any reasonable reliance by such holder
213 on such contractual provision or such applicable law; and

214 (D) Does not otherwise alter the legal, equitable or contractual rights
215 to which such claim or interest entitles the holder of such claim or
216 interest.

217 Sec. 8. (NEW) (*Effective October 1, 2005*) An acceptance or rejection of
218 a plan may not be solicited after the filing of a petition from a holder of
219 a claim or interest with respect to such claim or interest, unless, at the
220 time of or before such solicitation, there is transmitted to such holder
221 the plan or a summary of the plan and a written disclosure statement
222 approved by the Insurance Commissioner as containing adequate

223 information. As used in this section, "adequate information" means
224 information of a kind, and in sufficient detail, as far as is reasonably
225 practicable in light of the nature and history of the applicant and the
226 condition of the applicant's books and records, that the commissioner
227 determines would enable the holder of an impaired claim or interest to
228 make an informed judgment about the plan.

229 Sec. 9. (NEW) (*Effective October 1, 2005*) (a) The holder of a claim or
230 interest may accept or reject a plan. If the United States is a creditor or
231 equity security holder, the Secretary of the Treasury may accept or
232 reject the plan on behalf of the United States. Where the holder of a
233 policy and the holder of a claim against the insured covered by the
234 policy both seek to accept or reject a plan, the holder of the policy shall
235 be entitled to accept or reject the plan unless the court, upon motion of
236 the holder of the claim against the insured, determines that the holder
237 of the policy is not able to pay the claim from its own assets or from
238 other insurance.

239 (b) For the purposes of subsections (c) and (d) of this section, a
240 holder of a claim or interest that has accepted or rejected the plan
241 before the commencement of the case under sections 1 to 20, inclusive,
242 of this act is deemed to have accepted or rejected such plan, as the case
243 may be, if:

244 (1) The solicitation of such acceptance or rejection was in
245 compliance with other applicable law, rule or regulation governing the
246 adequacy of disclosure in connection with such solicitation; or

247 (2) If there is not any such law, rule or regulation, such acceptance
248 or rejection was solicited after disclosure to such holder of adequate
249 information, as defined in section 8 of this act.

250 (c) A class of claims has accepted a plan if such plan has been
251 accepted by creditors, other than any entity designated under
252 subsection (e) of this section, that hold at least two-thirds in amount
253 and more than one-half in number of the claims of such class held by
254 creditors, other than any entity designated under subsection (e) of this

255 section, that have accepted or rejected such plan.

256 (d) A class of interests has accepted a plan if such plan has been
257 accepted by holders of such interests, other than any entity designated
258 under subsection (e) of this section, that hold at least two-thirds in
259 amount of the allowed interests of such class held by holders of such
260 interests, other than any entity designated under subsection (e) of this
261 section, that have accepted or rejected such plan.

262 (e) On request of a party in interest, and after notice and a hearing,
263 the court may designate any entity whose acceptance or rejection of
264 such plan was not in good faith, or was not solicited or procured in
265 good faith or in accordance with the provisions of sections 1 to 20,
266 inclusive, of this act.

267 (f) Notwithstanding any other provision of this section, a class that
268 is not impaired under a plan, and each holder of a claim or interest of
269 such class, are conclusively presumed to have accepted the plan and
270 solicitation of acceptances with respect to such class from the holders
271 of claims or interests of such class is not required.

272 (g) Notwithstanding any other provision of this section, a class is
273 deemed not to have accepted a plan if such plan provides that the
274 claims or interests of such class do not entitle the holders of such
275 claims or interests to receive or retain any property under the plan on
276 account of such claims or interests.

277 (h) Unless otherwise ordered by the court for cause shown, the
278 amount of any claim under a policy or reinsurance agreement shall be
279 the greater of the applicant's reserves with respect to such policy or
280 reinsurance agreement or the premium paid by the creditor to the
281 applicant. Either the applicant or any creditor under a policy or
282 reinsurance agreement may request a determination of a claim for
283 purposes of voting under this section. A determination of a creditor's
284 claim under this section shall not be binding on the applicant or the
285 creditor for any other purpose.

286 Sec. 10. (NEW) (*Effective October 1, 2005*) (a) The applicant may, with
287 the consent of the Insurance Commissioner, modify a plan at any time
288 before confirmation, but may not modify such plan so that such plan
289 as modified fails to meet the requirements of sections 5 and 6 of this
290 act. After the applicant of a plan files a modification of such plan with
291 the court, the plan as modified becomes the plan.

292 (b) The applicant may, with the consent of the commissioner,
293 modify a plan at any time after confirmation of such plan and before
294 substantial consummation of such plan, but may not modify such plan
295 so that such plan as modified fails to meet the requirements of sections
296 5 and 6 of this act. Such plan as modified under this subsection
297 becomes the plan only if circumstances warrant such modification and
298 the court, after notice, confirms such plan as modified under section 11
299 of this act.

300 (c) The proponent of a modification shall comply with section 9 of
301 this act with respect to the plan as modified.

302 (d) Any holder of a claim or interest that has accepted or rejected a
303 plan is deemed to have accepted or rejected, as the case may be, such
304 plan as modified, unless, within the time fixed by the court, such
305 holder changes such holder's previous acceptance or rejection.

306 Sec. 11. (NEW) (*Effective October 1, 2005*) After notice, the court shall
307 hold a hearing on confirmation of a plan at which a party in interest
308 may object to confirmation of a plan.

309 Sec. 12. (NEW) (*Effective October 1, 2005*) The court shall confirm a
310 plan only if the following requirements are met:

311 (1) The plan complies with the applicable provisions of sections 1 to
312 20, inclusive, of this act.

313 (2) The applicant complies with the applicable provisions of sections
314 1 to 20, inclusive, of this act.

315 (3) The plan has been proposed in good faith and not by any means

316 prohibited by law.

317 (4) Any payment made or to be made by the applicant or by a
318 person issuing securities or acquiring property under the plan for
319 services, transaction fees or costs and expenses in or related to the case,
320 or related to the plan and incident to the case, has been approved by,
321 or is subject to the approval of, the court as reasonable.

322 (5) The applicant has disclosed the identity and affiliations of any
323 individual proposed to serve, after confirmation of the plan, as a
324 director, officer, or voting trustee of the applicant, an affiliate of the
325 applicant participating in a joint plan with the applicant or a successor
326 to the applicant under the plan and:

327 (A) The appointment to, or continuance in, such office of such
328 individual, is consistent with the interests of creditors and equity
329 security holders and with public policy; and

330 (B) The proponent of the plan has disclosed the identity of any
331 insider that will be employed or retained by the reorganized applicant,
332 and the nature of any compensation for such insider.

333 (6) The commissioner has approved the plan.

334 (7) With respect to each impaired class of claims or interests, each
335 holder of a claim or interest of such class:

336 (A) Has accepted the plan; or

337 (B) Will receive or retain under the plan on account of such claim or
338 interest property of a value, as of the effective date of the plan, that is
339 not less than the amount that such holder would so receive or retain if
340 the applicant were liquidated under title 38a of the general statutes on
341 such date.

342 (8) With respect to each class of claims or interests:

343 (A) Such class has accepted the plan; or

344 (B) Such class is not impaired under the plan.

345 (9) Except to the extent that the holder of a particular claim has
346 agreed to a different treatment of such claim, the plan provides that all
347 expenses of the administration of the case are paid in full in cash.

348 (10) If a class of claims is impaired under the plan, at least one class
349 of claims that is impaired under the plan has accepted the plan,
350 determined without including any acceptance of the plan by any
351 insider.

352 (11) Confirmation of the plan is not likely to be followed by the
353 liquidation, or the need for further financial reorganization, of the
354 applicant or any successor to the applicant under the plan, unless such
355 liquidation or reorganization is proposed in the plan.

356 (12) All fees payable under sections 1 to 20, inclusive, of this act, as
357 determined by the Insurance Commissioner at the hearing on
358 confirmation of the plan, have been paid or the plan provides for the
359 payment of all such fees on the effective date of the plan.

360 (13) If the applicable requirements of this section, except those in
361 subdivision (8) of this subsection, are met with respect to a plan, the
362 court, on request of the proponent of the plan, shall confirm the plan if
363 the plan does not discriminate unfairly, and is fair and equitable, with
364 respect to each class of claims or interests that is impaired under, and
365 has not accepted, the plan.

366 (14) For the purpose of this subsection, the condition that a plan be
367 fair and equitable with respect to a class includes the following
368 requirements: With respect to a class of secured claims, the plan
369 provides:

370 (A) That the holders of such claims retain the liens securing such
371 claims, whether or not the property subject to such liens is retained by
372 the applicant or transferred to another entity, to the extent of the
373 allowed amount of such claims; and

374 (B) That each holder of a claim of such class receive on account of
375 such claim deferred cash payments totaling at least the allowed
376 amount of such claim, of a value, as of the effective date of the plan, of
377 at least the value of such holder's interest in the applicant's interest in
378 such property;

379 (C) For the sale of any property that is subject to the liens securing
380 such claims, free and clear of such liens, with such liens to attach to the
381 proceeds of such sale, and the treatment of such liens on proceeds
382 under subparagraph (A) or (B) of this subdivision; or

383 (D) For the realization by such holders of the undisputed equivalent
384 of such claims.

385 (15) With respect to a class of unsecured claims:

386 (A) The plan provides that each holder of a claim of such class
387 receive or retain on account of such claim property of a value, as of the
388 effective date of the plan, equal to the allowed amount of such claim;
389 or

390 (B) The holder of any claim or interest that is junior to the claims of
391 such class will not receive or retain under the plan on account of such
392 junior claim or interest any property.

393 (16) With respect to a class of interests:

394 (A) The plan provides that each holder of an interest of such class
395 receive or retain on account of such interest property of a value, as of
396 the effective date of the plan, equal to the greatest of the allowed
397 amount of any fixed liquidation preference to which such holder is
398 entitled, any fixed redemption price to which such holder is entitled,
399 or the value of such interest; or

400 (B) The holder of any interest that is junior to the interests of such
401 class will not receive or retain under the plan on account of such junior
402 interest any property.

403 Sec. 13. (NEW) (*Effective October 1, 2005*) (a) The provisions of a
404 confirmed plan shall bind the applicant, any entity issuing securities
405 under the plan, any entity acquiring property under the plan and any
406 creditor or equity security holder whether or not the claim or interest
407 of such creditor or equity security holder is impaired under the plan
408 and whether or not such creditor or equity security holder or general
409 partner has accepted the plan.

410 (b) Except as otherwise provided in the plan or the order confirming
411 the plan, the confirmation of a plan vests all of the property of the
412 applicant in the applicant.

413 (c) Except as otherwise provided in the plan or in the order
414 confirming the plan, after confirmation of a plan, the property dealt
415 with by the plan is free and clear of all claims and interests of creditors
416 and equity security holders in the applicant.

417 (d) Except as otherwise provided in this subsection, in the plan or in
418 the order confirming the plan, the confirmation of a plan:

419 (1) Discharges the applicant from any debt that arose before the date
420 of such confirmation, and any debt under a policy entered into or
421 issued before the date of such confirmation, whether or not (A) the
422 holder of a claim asserts such claim under sections 1 to 20, inclusive, of
423 this act; or (B) the holder of such claim has accepted the plan; and

424 (2) Terminates all rights and interests of equity security holders
425 provided for by the plan.

426 Sec. 14. (NEW) (*Effective October 1, 2005*) (a) Notwithstanding any
427 provision of law relating to financial condition, the applicant and any
428 entity organized or to be organized for the purpose of carrying out the
429 plan shall carry out the plan and shall comply with any orders of the
430 court.

431 (b) The court may direct the applicant and any other necessary party
432 to execute or deliver or to join in the execution or delivery of any

433 instrument required to effect a transfer of property dealt with by a
434 confirmed plan, and to perform any other act, including the
435 satisfaction of any lien, that is necessary for the consummation of the
436 plan.

437 Sec. 15. (NEW) (*Effective October 1, 2005*) If a plan requires
438 presentment or surrender of a security or the performance of any other
439 act as a condition to participation in distribution under the plan, such
440 action shall be taken not later than five years after the date of the entry
441 of the order of confirmation. Any entity that has not within such time
442 presented or surrendered such entity's security or taken any such other
443 action that the plan requires may not participate in distribution under
444 the plan.

445 Sec. 16. (NEW) (*Effective October 1, 2005*) On request of a party in
446 interest at any time not later than one hundred eighty days after the
447 date of the entry of the order of confirmation, and after notice and a
448 hearing, the court may revoke such order only if such order was
449 procured by fraud. An order under this section revoking an order of
450 confirmation shall:

451 (1) Contain such provisions as are necessary to protect any entity
452 acquiring rights in good faith reliance on the order of confirmation;
453 and

454 (2) Revoke the discharge of the applicant.

455 Sec. 17. (NEW) (*Effective October 1, 2005*) (a) Except as provided in
456 subsection (d) of this section, the applicant, subject to the court's
457 approval, may assume or reject any executory contract or unexpired
458 lease of the applicant. Executory contracts shall include policies which
459 are, at the time of assumption or rejection, within the period of
460 coverage.

461 (b) If there has been a default in an executory contract or unexpired
462 lease of the applicant, the applicant may not assume such contract or
463 lease unless, at the time of assumption of such contract or lease, the

464 applicant:

465 (1) Cures, or provides adequate assurance that the applicant will
466 promptly cure, such default;

467 (2) Compensates, or provides adequate assurance that the applicant
468 will promptly compensate, a party other than the applicant to such
469 contract or lease, for any actual pecuniary loss to such party resulting
470 from such default; and

471 (3) Provides adequate assurance of future performance under such
472 contract or lease.

473 (c) Subsection (b) of this section shall not apply to a default that is a
474 breach of a provision relating to:

475 (1) The insolvency or financial condition of the applicant at any time
476 before the closing of the case;

477 (2) The commencement of a case under sections 1 to 20, inclusive, of
478 this act; or

479 (3) The satisfaction of any penalty rate or provision relating to a
480 default arising from any failure of the applicant to perform
481 nonmonetary obligations under the executory contract or unexpired
482 lease.

483 (d) (1) The applicant may not assume or assign any executory
484 contract or unexpired lease of the applicant, whether or not such
485 contract or lease prohibits or restricts assignment of rights or
486 delegation of duties, if:

487 (A) Applicable law excuses a party to such contract or lease, other
488 than the applicant, from accepting performance from or rendering
489 performance to an entity other than the applicant, whether or not such
490 contract or lease prohibits or restricts assignment of rights or
491 delegation of duties; and

492 (B) Such party does not consent to such assumption or assignment;
493 or

494 (C) Such contract is a contract to make a loan, or extend other debt
495 financing or financial accommodations, to or for the benefit of the
496 applicant, or to issue a security of the applicant.

497 (2) The limitations in subdivision (1) of this subsection shall not
498 impair the applicant's right to assume executory contracts that are
499 policies or reinsurance agreements.

500 (e) Except as provided in subsection (d) of this section,
501 notwithstanding a provision in an executory contract or unexpired
502 lease of the applicant, or in applicable law, that prohibits, restricts or
503 conditions the assignment of such contract or lease, the applicant may
504 assign such contract or lease, except that the applicant may not assign
505 a reinsurance agreement under this section if such assignment would
506 result in such reinsurance agreement covering policies that were
507 issued by any person other than the applicant.

508 (f) The applicant may assign an executory contract or unexpired
509 lease of the applicant only if:

510 (1) The applicant assumes such contract or lease in accordance with
511 the provisions of this section; and

512 (2) Adequate assurance of future performance by the assignee of
513 such contract or lease is provided, whether or not there has been a
514 default in such contract or lease.

515 (g) Notwithstanding a provision in an executory contract or
516 unexpired lease of the applicant, or in applicable law that terminates or
517 modifies, or permits a party other than the applicant to terminate or
518 modify, such contract or lease or a right or obligation under such
519 contract or lease on account of an assignment of such contract or lease,
520 such contract, lease, right or obligation may not be terminated or
521 modified under such provisions because of the assumption or

522 assignment of such contract or lease by the trustee.

523 (h) The rejection of an executory contract or unexpired lease of the
524 applicant constitutes a breach of such contract or lease.

525 (i) Assignment by the applicant to an entity of a contract of lease
526 assumed under this section relieves the applicant from any liability for
527 any breach of such contract or lease occurring after such assignment.

528 Sec. 18. (NEW) (*Effective October 1, 2005*) (a) After the filing of a
529 petition under section 4 of this act and before confirmation of a plan,
530 the applicant shall notify each creditor whose claim is impaired under
531 the plan of the amount which the applicant proposes to use as a basis
532 for making a distribution under the plan. Such amount may, if the plan
533 so provides, include an estimate of amounts that the applicant may
534 become obligated to pay to or on behalf of such creditor in the future.
535 Any estimate shall not provide a basis for submitting a claim to a
536 reinsurer under a reinsurance agreement.

537 (b) If a creditor disputes the amount proposed by the applicant in
538 such notice, the creditor may request a hearing as to the valid amount
539 of such claim and the best estimate of amounts that may be owed in
540 the future. In any such hearing, the creditor shall have the burden of
541 proof as to such amount.

542 Sec. 19. (NEW) (*Effective October 1, 2005*) (a) (1) Upon application to
543 the department for redomestication for the purpose of filing a petition
544 under sections 1 to 20, inclusive, of this act, the applicant shall pay a
545 fee to the department in the amount of one hundred twenty-five
546 thousand dollars or such lesser amount as the Insurance
547 Commissioner deems adequate for appropriate and thorough review
548 of the application.

549 (2) Subsequent to the filing of an application for redomestication,
550 the applicant shall reimburse the Insurance Department for all legal,
551 actuarial, accounting and other professional fees and all other fees and
552 expenses incurred by the department in connection with the

553 application.

554 (b) (1) Every March fifteenth, the commissioner shall assess each
555 applicant an amount equal to the greater of: (A) One thousand dollars,
556 or (B) the sum of that applicant's proportionate share of estimated
557 regulatory expenditure for that calendar year and that applicant's
558 assessment deficit, less its assessment surplus.

559 (2) The calculation of the assessment surplus or deficit shall reflect
560 the total cost of any examinations, which shall be borne by the
561 companies so examined, and shall include the following expenses:

562 (A) One hundred fifty per cent of the total salaries and benefits paid
563 to the examining personnel of the department engaged in those
564 examinations, including, but not limited to, examiners, actuaries,
565 attorneys, managers and paraprofessionals, less any salary
566 reimbursements;

567 (B) All reasonable technology costs related to the examination
568 process. Technology costs shall include the actual cost of software and
569 hardware utilized in the examination process and the cost of training
570 examination personnel in the proper use of the software or hardware;

571 (C) All necessary and reasonable education and training costs
572 incurred by the state to maintain the proficiency and competence of the
573 examining personnel.

574 (3) Each applicant shall pay the assessment to the department on or
575 before the following fifteenth day of April.

576 (4) An insurer that redomiciles to this state after March fifteenth of
577 any year and that qualifies as an applicant upon redomestication shall
578 pay an assessment equal to the commissioner's estimate of
579 redomestication expenditure attributable to that applicant.

580 (5) All revenues collected pursuant to this section shall be deposited
581 in the Insurance Fund established in section 38a-52a of the general
582 statutes. Such assessment shall be in addition to any taxes and fees

583 otherwise payable to the state.

584 (c) Except with respect to policy renewals required by law or
 585 contract, no applicant shall be subject to any assessment or assignment
 586 in connection with any residual market, fair plan or assigned-risk plan
 587 mechanisms in this state.

588 Sec. 20. (NEW) (*Effective October 1, 2005*) The Insurance
 589 Commissioner may adopt regulations, in accordance with chapter 54
 590 of the general statutes, to implement sections 1 to 19, inclusive, of this
 591 act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	New section
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	New section
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>October 1, 2005</i>	New section
Sec. 6	<i>October 1, 2005</i>	New section
Sec. 7	<i>October 1, 2005</i>	New section
Sec. 8	<i>October 1, 2005</i>	New section
Sec. 9	<i>October 1, 2005</i>	New section
Sec. 10	<i>October 1, 2005</i>	New section
Sec. 11	<i>October 1, 2005</i>	New section
Sec. 12	<i>October 1, 2005</i>	New section
Sec. 13	<i>October 1, 2005</i>	New section
Sec. 14	<i>October 1, 2005</i>	New section
Sec. 15	<i>October 1, 2005</i>	New section
Sec. 16	<i>October 1, 2005</i>	New section
Sec. 17	<i>October 1, 2005</i>	New section
Sec. 18	<i>October 1, 2005</i>	New section
Sec. 19	<i>October 1, 2005</i>	New section
Sec. 20	<i>October 1, 2005</i>	New section

INS *Joint Favorable Subst.*